

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'सी', अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“ C ” BENCH, AHMEDABAD**

सर्वश्री प्रदीप कुमार केडिया, लेखा सदस्य एवं महावीर प्रसाद, न्यायिक सदस्य के समक्ष ।  
**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &**  
**SHRI MAHAVIR PRASAD, JUDICIAL MEMBER**

1. आयकर अपील सं./I.T.A. No.2925/Ahd/2015
  2. आयकर अपील सं./I.T.A. No.942/Ahd/2016
- (निर्धारण वर्ष / Assessment Years : 2010-11 & 2011-12 respectively)

Sanghvi Infrastructure Ltd. 10 <sup>th</sup> Floor, Kataria Arcade Off:S.G.Highway Makarba,Ahmedabad-380 051	<b>बनाम/</b> Vs.	The Dy.CIT Circle-8 Ahmedabad
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AALCS 2163A</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri P.M. Mehta, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Lalit P.Jain, Sr.DR

सुनवाई की तारीख / Date of Hearing	26/02/2019
घोषणा की तारीख/Date of Pronouncement	28/ 02/2019

**आदेश / O R D E R**

**PER MAHAVIR PRASAD, JUDICIAL MEMBER :**

The captioned appeals have been filed at the instance of the Assessee against the separate appellate orders of the Commissioner of Income Tax(Appeals)-9/4, Ahmedabad [CIT(A) in short] dated 15/08/2015 and 04/03/2016 arising in the assessment orders passed under s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as

"the Act") dated 22/03/2013 and 20/03/2014 relevant to Assessment Years (AYs) 2010-11 & 2011-12 respectively.

2. The grounds of appeal raised by the Assessee read as under:-

1. *In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in sustaining disallowance of interest expense to the extent of Rs.93,88,884 (out of disallowance of Rs.2,53,26,078 made in the assessment order impugned before him).*
2. *In view and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in altogether omitting to consider Grounds No.3 and 4 of the appellant's appeal before him reading as under:*
  - "3. On the facts and in the circumstances of the case, the learned Assessing Officer erred in initiating penalty proceedings u/s.271(1)(c) of the I.T.Act.*
  - 4. On the facts and in the circumstances of the case, the learned Assessing Officer erred in charging interest under sections 234A, 234B, 234C and 234D of the I.T. Act.*

3. Briefly stated, facts are that the assessee-company is engaged in the business of providing Dredger and other infrastructure facilities. There were addition of Rs.21,10,50,561/- to the total asset which comprise of capital work-in-progress of Rs.16,47,56,851/- and addition of Rs.4,60,84,210/- to dredger and Rs.2,02,090/- to furniture and fixture. The assessee has taken term loan of Rs.25,00,00,000/- and accordingly

interest of Rs.2,53,26,078/- was held by the Assessing Officer to be capitalized u/s.36(1)(iii) at 12% on addition to total asset of Rs.21,10,50,561/-. The Assessing Officer has made disallowance of interest u/s.36(1)(iii) on the presumption that borrowed funds are utilized for purchase of dredger which is not put to use. On consideration of enquire facts it is appreciated that addition of Rs.21,10,50,561/- to the Fixed Asset, includes addition of Rs.4,60,84,210/- made to Pertuis II dredger which is already put to use and the facts that depreciation on this dredger was allowed in earlier year further supports the argument of the assessee that the dredger Pertuis II is already put to use and hence capitalization of interest u/s.36(1)(iii) on addition made to this dredger is not justified. Further, the addition to total asset includes addition of Rs.2,02,090/- to furniture and fixture which cannot be considered for capitalization of interest expenditure u/s.36(1)(iii). Thus, capitalization of interest expenditure u/s.36(1)(iii) is restricted on addition to capital WIP of Rs.16,47,56,851/-. Further, the fact that the assessee has taken loan of Rs.25 crore from Yes Bank on 23/10/2009 and paid interest of Rs.1,42,46,575/- on such loan. The disallowance of proportionate interest expenses on Capital WIP of Rs.16,47,56,851/- is restricted from the date of sanction of loan to the balance sheet date as against the disallowance made for the whole year while passing assessment order. Thus capitalization of interest u/s.36(1)(iii) is restricted to Rs.93,88,884/- on the addition to capital WIP of Rs.16,47,56,851/- from the date of

sanction of loan as against disallowance made for the whole year in the assessment order.

4. Aggrieved by the order of the Ld.CIT(A), assessee is now in appeal before us.

5. We have heard the Ld. Representatives appearing for the respective parties. We have perused the relevant material available on record. Assessee is engaged in the business of providing dredger and other infrastructure facilities. In the year under consideration, the Ld.CIT(A) capitalization of interest u/s.36(1)(iii) was restricted to Rs.93,88,884/- on the addition to capital WIP of Rs.16,47,56,851/- from the date of sanction of loan as against disallowance made for the whole year in the assessment order.

6. The question before us is whether an amount of Rs.93,88,884/- can be added to the income of the assessee or not. In this regard, we draw support from the order of the Hon'ble Supreme Court in the matter of DCIT v/s. Core Healthcare Ltd. (2008) 298 ITR 194 (SC), wherein it is held that interest on borrowed capital to be allowed and makes no distinction between money borrowed to acquire a capital or a revenue asset and section 36(1)(iii) requires that assessee must borrow capital and the purpose of the borrowing must be for business which is carried on by

the assessee in the year of account. Unlike, section 37 which expressly excludes an expense of a capital nature, section 36(1)(iii) emphasizes is the user of the capital and not the user of the asset which case into existence as a result of borrowed capital. The legislature has, therefore, made no distinction in section 36(1)(iii) between “capital borrowed for a revenue purpose” and “capital borrowed for a capital purpose”. An assessee is entitled to claim on borrowed capital provided that capital is used for business irrespective of what may be the result of using the capital which the assessee has borrowed. Further, the words “actual cost” do not find place in section 36(1)(iii) of the Act.

7. In the matter of Vardhaman Polytec Ltd. vs. CIT (1979) 118 ITR 200 (SC). The Hon’ble Supreme Court has held that we need to see nexus between the advancing of funds and business interest and there are three ingredients:

- (i) The money, i.e. capital must have been borrowed by the assessee.
- (ii) It must have been borrowed for business purpose.
- (iii) The assessee must have paid interest on borrowed amount that he had shown the same as item of expenditure.

8. In this case, assessee has taken loan from Bank/financial institution and paid interest and the same is reflecting in the balance-sheet of the assessee.

9. Therefore, we are of the opinion that relief should be granted to the assessee/appellant.

12. So far as next grounds for levy of penalty u/s.271(1)(c) of the Act and charging of interest u/s.234-A, 234-B, 234-C & 234-D of the Act are concerned, the same are consequential since we have granted relief to the assessee. Therefore, we do not want to adjudicate separately.

11. In the result, the appeal of the assessee in ITA No.2925/Ahd/2015 for AY 2010-11 is allowed.

ITA No.94/Ahd/2016 for AY 2011-12

12. The assessee has taken following grounds of appeal:

1. *In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in dismissing Ground No.1 of the appellant's appeal challenging the validity of the assessment order impugned before him, on the ground that it was general in nature no requiring his consideration.*
2. *In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in sustaining disallowance of interest expense to the extent of Rs.2,51,62,174 (out of disallowance of Rs.2,70,79,651 made in the assessment order impugned before him) made in pursuance of the Proviso to Section 36(1)9iii) of the Income-tax Act, 1961. He ought to have appreciated, inter alia, that the said Proviso could be invoked only where the acquisition of asset/s was made for the*

*purpose of extension of e4xisting business which was not the case with the appellant.*

*3. In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in dismissing Ground No.7 of the appellant's appeal before him challenging the initiation of penalty proceedings u/s.271(1)(c), as premature. He ought to have appreciated, inter alia, that in the peculiar facts and circumstances of the appellant's case, there being absolutely no warrant/justification for initiating the penalty proceedings, he ought to have ordered for their being dropped, thereby saving both the appellant and the Department from long drawn unnecessary litigation.*

13. Since relief has been granted by us in the connecting appeal of the assessee(supra) and in this appeal only assessment year and amount is different. Thus, for parity of reasons noted above, our view in ITA No.2925/RJT/2015 for AY 2010-11 above shall apply *mutatis mutandis* to the appeal captioned above. As a result, the appeal of the Assessee in ITA No.942/Rjt/2016 for AY 2011-12 is allowed.

14. In the result, both the appeals of the assessee are allowed.

<b>This Order pronounced in Open Court on</b>	<b>28/ 02/2019</b>
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Sd/-  
( PRADIP KUMAR KEDIA )  
ACCOUNTANT MEMBER  
Ahmedabad; Dated 28/ 02 /2019

Sd/-  
( MAHAVIR PRASAD )  
JUDICIAL MEMBER

ITA Nos.2925/Ahd/2015 &  
942/Ahd/2016  
Sanghi Infrastructure Ltd. vs. DCIT  
Asst.Years – 2010-11 & 2011-12

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**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-9, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad